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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,378	03/18/2004	Thomas B. Ferrara	FERR-3800	5498
7590	09/22/2005		EXAMINER	
Gerald Dudding Mark Friedman Schmeiser, Olsen & Watts 3 Lear Jet Lane Latham, NY 12110			VASUDEVA, AJAY	
			ART UNIT	PAPER NUMBER
			3617	
DATE MAILED: 09/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/803,378

Applicant(s)

FERRARA, THOMAS B.

Examiner

Ajay Vasudeva

Art Unit

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 30-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 14 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 28 and 30-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention or Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/10/2005.

Applicant's election with traverse of Group I, Species I (claims 1-27 and 29) is acknowledged. The traversal is on the ground(s) that a single search will cover all pending claims, and therefore there is no serious burden on the Examiner. This is not found persuasive because MPEP section 803 refers to the propriety of a restriction with regards to search as well as the examination of the application. Even if a single search could cover all pending claims, at least the examination of all claims presents a serious burden on the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

2. On page 6 (line 4), change "42" to -- 43 --.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 19-27 and 29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In claim 19, applicant positively recites a combination of a floatation apparatus with a dog by setting forth "A floatation apparatus ... wherein the floatation

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apparatus is supporting a dog over water" (emphasis provided). Applicant is reminded that claiming a living being/animal in a claim is not permitted.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 4-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 4, applicant claims a "resilient structure removably attached to an exterior portion of the swimming pool". However, the Specification is silent on such arrangement.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 7-13, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Mears et al. (US 6,223,673 B1).

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Mears et al. shows a floatation apparatus comprising a platform structure [30], a permanent buoyancy structure [18], and at least one removable buoyancy structure [14] removably attached to the floatation apparatus. The platform structure is made of a woven polymeric material. Because a woven material is made by interlacing the threads, the material of the platform would inherently comprise perforations of some magnitude.

Re claim 2-4 and 7, it is noted that the phrase “~~adapted to secure~~” in claim 2 is merely an intended use limitation that does not positively recite an attachment. In the present case, an attachment structure [42] is capable of securing the floatation apparatus to any object, and therefore, is considered to be “adapted to secure the floatation apparatus to an object”. Further, because the “object” recited in claim 2 has not been set forth positively in a combination with the apparatus, such has been given no patentable weight. As such, the “object” in the forms of a pool (claim 3), or a dock/boat (claim 7) have likewise not been given any patentable weight.

Re claims 8-11, both the permanent buoyancy structure and the removable buoyancy structure are inflatable and made of PVC (col. 4 and 5).

Re claim 15, a ramp structure [16] is removably attached to the floatation apparatus.

Re claim 16, a barrier [26] is removably attached to the floatation apparatus.

Re the limitation “permanent”, the buoyancy structure [18] is made of a non-perishable material, and is therefore considered to be a permanent structure. Additionally, if the structure is kept inflated, the structure would have a permanent buoyancy. Re portability, because the apparatus is inflatable and able to float on the water surface, such is considered to be relatively light in weight, which would easily allow one to carry the apparatus by lifting or simply shifting over the water surface. All structures described above are designed to support a human user, and therefore, are equally capable of supporting a pet on water.

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***Allowable Subject Matter***

9. Claims 14 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Ajay Vasudeva  
Examiner  
Art Unit 3617

  
9/19/05  
**AJAY VASUDEVA**  
**PATENT EXAMINER**